

1 BEFORE THE
2 POLLUTION CONTROL HEARINGS BOARD
 STATE OF WASHINGTON

3 IN THE MATTER OF)
4 DAHL FISH COMPANY, INC.,)
)
5 Appellant,)
)
6 v.)
)
7 STATE OF WASHINGTON,)
8 DEPARTMENT OF ECOLOGY,)
)
)
9 Respondent.)
)
)

PCHB No. 78-19

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

10 This matter, the appeal from the issuance of a \$2,000 civil penalty
11 for the alleged violation of the terms of an NPDES waste discharge permit,
12 came before the Pollution Control Hearings Board, Dave J. Mooney, Chairman,
13 and David A. Akana (presiding), at a formal hearing in Bellingham,
14 Washington, on September 25, 1978. Respondent was represented by Charles
15 W. Lean, Assistant Attorney General; appellant was represented by its
16 attorney, Edward B. O'Connor.

17 Having heard the testimony, having examined the exhibits, and having
18 considered the contentions of the parties, the Board makes these

1 FINDINGS OF FACT

2 I

3 Appellant, a sea food processor of bottom fish, is located at 601
4 West Chestnut Street in Bellingham, Washington. The plant operates an
5 average of 280 days each year, and employs a maximum of 60 people. As a
6 result of its processing, a maximum of 48,000 gallons of wastewater are
7 discharged into the Whatcom Creek Waterway each day.

8 II

9 In its application for a state waste discharge permit in January of
10 1973, appellant stated that it "will hook up to City of Bellingham sewer
11 as soon as it is completed, which should be sometime in 1974." The same
12 representations were made by appellant in its application for a National
13 Pollutant Discharge Elimination System (NPDES) Permit application in
14 November of 1973. An NPDES permit was subsequently issued requiring that
15 all industrial and sanitary waste discharges to Bellingham Bay, except for
16 non-contact cooling water, be eliminated by their interception, collection,
17 and discharge to the City of Bellingham sanitary sewerage system by
18 October 1, 1974, the date on appellant's application. Appellant was also
19 required to report its compliance or non-compliance within 14 days after
20 October 1, 1974. Appellant did not make any such report.

21 III

22 The City sewer system was available for hookup with appellant's plant
23 on August 22, 1975. Appellant first learned of the hookup availability
24 in the spring of 1976 (Exhibit R-7) and hired an engineer to design a
25 system in July of 1976. Appellant's president testified that he personally
26 had no notice that the system was ready for hookup until receiving the

1 Notice of Violation dated December 21, 1976.

2 IV

3 In November, 1976, respondent's agents inspected appellant's facility
4 and discovered that no connection to the City sewer system was made. For
5 allegedly failing to comply with its NPDES permit, appellant was assessed
6 a \$2,000 civil penalty by respondent in December of 1976. Concurrently,
7 respondent issued a Notice of Violation which required that appellant
8 file a report relating the steps it would take to control the waste.

9 V

10 In its application for relief from the penalty, appellant cited
11 complex engineering problems, unclear City pre-treatment standards, and
12 lack of notice of sewer completion from the City as reasons for non-
13 compliance with the terms of the permit.

14 Appellant's determination of the character and flows of wastewater
15 generated was not essential for hookup to the City sewer and, in any
16 event, could have been studied during the period before sewer availability.
17 With such studies, appellant would have been able to determine if its
18 waste required pre-treatment.

19 Appellant's plant, situated near the high-tide water level, would
20 require a different sewerage collection design and choice of materials
21 as compared to an upland plant. While design and construction of an
22 appropriate system would require more expertise and time than a plant
23 situated higher upland, the problems at appellant's plant were not
24 insurmountable.

25 VI

26 Based upon its Notice of Violation, respondent issued an Order dated

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 February 18, 1977, which incorporated a May 13, 1977 plan submission dat
2 and a September 1, 1977 completion date which was offered by appellant.
3 In view of the order, the disposition of the \$2,000 civil penalty was
4 placed in abeyance pending compliance with the order.

5 On June 17, 1977 respondent received the plans which should have
6 been submitted by appellant on May 13, 1977. The plans were approved on
7 July 7, 1977.

8 On October 5, 1977 respondent asked appellant whether its waste
9 water discharges were terminated. Respondent then learned that appellant's
10 engineer had been seriously ill in August.

11 On December 1, 1977, three months after the scheduled completion
12 date, respondent visited appellant's plant and verified that no
13 connection had been made to the City sewer, and that all the floor drains
14 and restrooms continued to be discharged into the Whatcom Waterway.
15 Moreover, no time table for connection had been formulated.

16 After review of the circumstances of the matter, the application for
17 relief from the \$2,000 civil penalty was denied. Respondent also ordered
18 that all industrial and sanitary waste discharges to Bellingham Bay be
19 eliminated by April 30, 1978. On April 30, 1978 appellant achieved
20 connection to the City's sewerage system. Appellant could have completed
21 such connection as early as the end of 1975.

22 VII

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings the Board comes to these

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I

Appellant violated RCW 90.48.180 by its failure to comply with Condition S3.a of its NPDES Waste Discharge Permit No. WA-002940-8. Appellant's duty was based upon its own compliance date representations in its applications for wastewater discharge permits. Further, it had an additional duty to report to respondent if it could not meet the dates it selected. In any event, appellant could have completed connection to the sewer by the end of 1975 had it and its agents proceeded in a timely manner. Accordingly, a civil penalty assessed pursuant to RCW 90.48.144 was proper. The amount of the civil penalty, i.e., \$2,000, is reasonable in view of the circumstances of the case and should be affirmed. Respondent is authorized to assess a fine of up to \$5,000 per day for each day of violation but did not do so in this case.

II

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

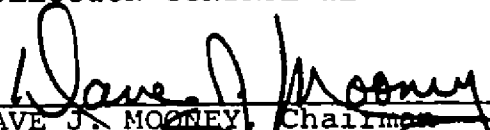
From these Conclusions the Board enters this


ORDER

The \$2,000 civil penalty is affirmed.

DATED this 16th day of October, 1978.

POLLUTION CONTROL HEARINGS BOARD


DAVE J. MOONEY, Chairman


DAVID A. AKANA, Member